

§ 301.6362-6

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for the partnership are performed entirely within State X.

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§ 301.6362-6 Requirements relating to residence.

(a) *In general.* A tax imposed by a State meets the requirements of section 6362(e) and this section if in effect it provides that:

(1) The State of residence of an individual, estate, or trust is determined according to paragraph (1), (2), or (3) respectively, of section 6362(e), and according to paragraph (b), (c), or (d), respectively, of this section.

(2) The liability for a resident tax imposed by such State upon an individual or trust which changes residence to another State in the taxable year is determined according to section 6362(e)(4) and paragraph (e) of this section.

(3) The rules relating to current collection of tax apply as provided in section 6362(e)(5) and paragraph (f) of this section.

(b) *Residence of an individual—(1) In general.* Except as otherwise provided in subparagraph (5) of this paragraph (b), an individual is treated as a resident of a State with respect to a taxable year only if:

(i) His principal place of residence (as defined in subparagraph (2) of this paragraph (b)) is within such State for a period of at least 135 consecutive days, at least 30 days of which are in such taxable year; or

(ii) In the case of a citizen or resident of the United States who is not a resident of any State (determined as provided in subdivision (i) of this subparagraph) with respect to such taxable year, his domicile (as defined in subparagraph (3) of this paragraph (b)) is in such State for at least 30 days during such taxable year.

With respect to an individual who is a resident (determined as provided in subdivision (i) of this subparagraph) of more than one State during a taxable year, see paragraph (e) of this section.

(2) *Principal place of residence—(i) Definition.* For purposes of subparagraph (1)(i) of this paragraph (b), and paragraph (d)(4) of this section, the term “principal place of residence” shall mean the place which is an individual’s primary home. An individual’s tem-

porary absence from his primary home shall not effect a change with respect thereto. On the other hand, if an individual moves to another State, other than as a mere transient or sojourner, he shall be treated as having changed the location of his primary home.

(ii) *Examples.* The application of this subparagraph may be illustrated by the following examples:

Example 1. A has a city home and a country home. He resides in the city home for 7 months of the year and uses the address of that home as his legal residence for purposes of driver’s license, automobile registration, and voter registration. He resides in the country home 5 months of the year. His city home is considered his principal place of residence.

Example 2. During the taxable year, B, a construction worker, is employed at several different locations in different States. The duration of each job on which he is employed ranges from a few weeks to several months, and he knows when he accepts a job what its approximate duration will be. He owns a house in State X which he uses as his legal residence for purposes of driver’s license, automobile registration, and voter registration. In addition, his family lives there during the entire year, and B lives there during periods between jobs. However, the duration of the jobs and the distance between the job-sites and his house require him to live in the localities of the respective job-sites during the period of his employment, although occasionally he returns to his house in State X on weekends. B’s house in State X is his principal place of residence during all of the taxable year.

Example 3. C, a dependent of his parents who are residents of State X, is a full-time student in a 4-year degree program at a college in State Y. During the 9-month academic year, C lives on the college campus, but he returns to his parents’ home in State X for the summer recess. C gives the State Y as his residence for purposes of his driver’s license and voter registration, but lists the address of his parents’ home in State X as his “permanent address” on the records of the college which he attends. Although C’s domicile remains at his parents’ home in State X, his presence in State Y cannot be regarded as that of a mere transient or sojourner; accordingly, C’s principal place of residence is in State Y for that portion of the taxable year during which he attends college.

Example 4. D loses his job in State X, where he lived and worked for many years. After a series of unsuccessful attempts to find other employment in State X, he accepts a job in State Y. D gives up his apartment in State X and moves to State Y upon commencing his

new job; however, he intends to continue to explore available employment opportunities in State X so that he may return there as soon as an opportunity to do so arises. D changes his principal place of residence when he moves to State Y.

(3) *Domicile defined.* For purposes of subparagraph (1)(ii) of this paragraph (b), and paragraph (d)(4) of this section, the term “domicile” shall mean an individual’s fixed or permanent home. An individual acquires a domicile in a place by living there; even for a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to change domicile, nor will intention to change domicile effect such a change until accompanied by actual removal. A domicile, once acquired, is maintained until a new domicile is acquired.

(4) *Period of residence—(i) General rule.* An individual who becomes a resident of a State pursuant to subparagraph (1) of this paragraph (b), or who is at the beginning of a taxable year a resident of a State pursuant to such provision, shall be treated as continuing to be a resident of such State through the end of the taxable year, unless, prior thereto, such individual becomes a resident, under the principles of subparagraph (1), of another State or a possession or foreign country. In the event that the individual becomes a resident of such another jurisdiction prior to the end of the taxable year, his residence in such State shall be treated as ending on the day prior to the day on which he becomes a resident of such other jurisdiction pursuant to subparagraph (1).

(ii) *Examples.* The application of this subparagraph may be illustrated by the following examples:

Example 1. A, a calendar-year taxpayer, has his principal place of residence in State X from the beginning of 1976 through August 1, 1976, when he gives up permanently such principal place of residence. He spends the remainder of 1976 traveling outside of the United States, but does not become a resident of any other country. A is considered to be a resident of State X for the entire year 1976.

Example 2. Assume the same facts as in example 1, except that A ceases his traveling and establishes his principal place of residence in State Y on November 15, 1976. Assume, also, that A maintains that principal

place of residence for more than 135 consecutive days. Under these circumstances, for his taxable year 1976, A is considered to be a resident of State X from January 1 through November 14, and a resident of State Y from November 15 through December 31.

(5) *Special rules.* (i) No provision of subchapter E or the regulations thereunder shall be construed to require or authorize the treatment of a Senator, Representative, Delegate, or Resident Commissioner as a resident of a State other than the State which he represents in Congress.

(ii) For special rules relating to members of the Armed Forces, see paragraph (h) of § 301.6362-7.

(6) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A, a calendar-year taxpayer, maintains his principal place of residence in State X from December 1, 1976, through April 15, 1977. Assuming that A was not a resident of any other jurisdiction at any time during 1976, A is treated as a resident of State X for the entire year 1976. Such result would obtain even if A was absent from State X on vacation for some portion of December 1976. Moreover, such result would obtain even if it is assumed that A was a domiciliary of State Y from January 1, 1976, through April 15, 1977, because an individual’s domicile does not determine his residence so long as residence in one State for the taxable year can be determined from the general rule stated in the first sentence of paragraph (b)(1) of this section.

Example 2. Assume the same facts as in example 1 (including the fact of A’s domicile in State Y), except that A maintained his principal place of residence in State Z from September 15, 1975, through January 31, 1976, inclusive. With respect to the year 1976, A is treated as a resident of State Z from January 1 through November 30, and as a resident of State X from December 1 through December 31. A’s liability for the qualified taxes of the respective States for 1976 shall be determined pursuant to the provisions in paragraph (e) of this section.

(c) *Residence of an estate.* An estate of an individual is treated as a resident of the last State of which such individual was a resident, as determined under the rules of paragraph (b) of this section, prior to his death. However, the estate of an individual who was not a resident of any State (as determined without regard to the 30-day requirement in paragraph (b)(1) of this section) immediately prior to his death,

and who was not a resident of any State at any time during the 3-year period ending on the date of his death, is not treated as a resident of any State. For purposes of determining the decedent's last State of residence, the rules of paragraph (b) shall be applied irrespective of whether subchapter E was in effect at the time the period of 135 consecutive days of residence began, or whether the decedent's last State of residence is a State electing to enter into an agreement pursuant to subchapter E. The determination of the State of residence of an estate pursuant to this paragraph shall not be governed by any determination under State law as to which State is treated as the residence or domicile of the decedent for purposes other than its individual income tax (such as liability for State inheritance tax or jurisdiction of probate proceedings).

(d) *Residence of a trust*—(1) *In general.*

(i) The State of residence of a trust shall be determined by reference to the circumstances of the individual who, by either an inter-vivos transfer or a testamentary transfer, is deemed to be the "principal contributor" to the trust under the provisions of subdivision (ii) of this subparagraph.

(ii) If only one individual has ever contributed assets to the trust, including the assets which were transferred to the trust at its inception, then such individual is the principal contributor to the trust. However, if on any day subsequent to the initial creation of the trust, such trust receives assets having a value greater than the aggregate value of all assets theretofore contributed to it, then the trust shall be deemed (for the limited purpose of determining the State of residence) to have been "created" anew, and the individual who on the day of such creation contributed more (in value) than any other individual contributed on that day shall become the principal contributor to the trust. When a trust is created anew, all references in this paragraph to the creation of the trust shall be construed as referring to the most recent creation. For purposes of this paragraph, the value of any asset shall be its fair market value on the day that it was contributed to the trust; any subsequent appreciation or

depreciation in the value of the asset shall be disregarded.

(2) *Testamentary trust.* A trust with respect to which a deceased individual is the principal contributor by reason of property passing on his death is treated as a resident of the last State of which such individual was a resident, as determined under the rules of paragraph (b) of this section, before his death. However, if such deceased individual was not a resident of any State (as determined without regard to the 30-day requirement in paragraph (b)(1) of this section) immediately prior to his death, and was not a resident of any State at any time during the 3-year period ending on the date of his death, then a testamentary trust of which he is the principal contributor by reason of property passing on his death is not treated as a resident of any State. All property passing on the transferor's death is treated for this purpose as a contribution made to the trust on the date of death, regardless of when the property is actually paid over to the trust.

(3) *Nontestamentary trust.* A trust which is not a trust described in subparagraph (2) of this paragraph (d), is treated as a resident of the State in which the principal contributor to the trust, during the 3-year period ending on the date of the creation of the trust, had his principal place of residence for an aggregate number of days longer than the aggregate number of days he had his principal place of residence in any other State. However, if the principal contributor to such a trust was not a resident of any State at any time during such 3-year period, then the trust is not treated as a resident of any State.

(4) *Special rules.* If the application of the provisions of the foregoing subparagraphs of this paragraph results in a determination of more than one State of residence for a trust, or does not provide a rule by which the residence or nonresidence of the trust can be determined, then the determination of the State of residence of such trust shall be made according to the rules of the applicable subdivision of this subparagraph.

(i) If, at the time of creation of the trust, 50 percent or more in value of

the trust corpus consists of real property, then the trust shall be treated as a resident of the State in which more of the real property (in value) which was in the trust at such time was located than any other State.

(ii) If, at the time of creation of the trust, less than 50 percent in value of the trust corpus consists of real property, then the trust shall be treated as a resident of the State in which, at such time, the trustee, if an individual, had his principal place of residence, or, if a corporation, had its principal place of business. If there were two or more trustees, then the foregoing sentence shall be applied by reference to the principal places of residence, or of business, of the majority of trustees who had authority to make investment and other management decisions for the trust.

(iii) If, after application of the provisions of subdivisions (i) and (ii) of this subparagraph, the State of residence of the trust still cannot be ascertained, then the Commissioner of Internal Revenue shall determine the State of residence of such trust for purposes of qualified taxes. Such determination shall be made by reference to the number of significant contacts each State had with the trust at the time of its creation. Significant contacts shall include the principal place of residence of the principal contributor or contributors to the trust, the principal place of residence or business of the trustee (or trustees), the situs of the assets of which the trust corpus was composed, and the location from which management decisions emanated with respect to the business and investment interests of the trusts.

(5) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A created a trust in 1950 by transferring to it certain stock in a corporation. At the time of such transfer, the stock had a fair market value of \$1,000. A at all relevant times had his principal place of residence in State X, and accordingly the trust is treated as a resident of such State for qualified tax purposes. As of January 1, 1977, the stock originally contributed by A, which was at all times the only property in the trust, has a fair market value of \$3,000. On such date, B, who has had his principal place of residence in State Y for more than 3

years, contributes to the trust property having a fair market value of \$1,200. For purposes of determining the identity of the principal contributor to the trust and the State of residence of the trust, the stock contributed by A in 1950 continues to be valued for such purposes at \$1,000. Thus, the trust is treated as being created anew on January 1, 1977, with B as the principal contributor, and with State Y as its State of residence.

Example 2. C has his principal place of residence in State X continuously for many years, until August 1, 1978, when he establishes his principal place of residence in State Y. The change of residence is intended to be permanent, and C has no further contact with State X after such change. On January 1, 1980, C creates a nontestamentary trust. During the 3-year period ending on such date C had his principal place of residence in State X for 576 days, and in State Y for 519 days. Therefore, the trust is treated as a resident of State X.

(e) *Liability for tax on change of residence during taxable year—(1) In general.* If, under the principles contained in paragraph (b) or (d) of this section, an individual or trust becomes a resident, or ceases to be a resident, of a State, and is also a resident of another jurisdiction outside of such State during the same taxable year, the liability of such individual or trust for the resident tax of such State shall be determined by multiplying the amount which would be his or its liability for tax (computed after allowing the non-refundable credits (i.e., credits not corresponding to the credits referred to in section 6401(b) available against the tax)) if he or it had been a resident of such State for the entire taxable year by a fraction, the numerator of which is the number of days he or it was a resident of such State during the taxable year, and the denominator of which is the total number of days in the taxable year. The preceding sentence shall not apply by reason of the fact that an individual is born or dies during the taxable year, or by reason of the fact that a trust comes into existence or ceases to exist during the taxable year.

(2) *Residence determined by domicile.* When an individual is treated as a resident of a State by reason of being domiciled in such State, pursuant to paragraph (b)(1)(ii) of this section, then the numerator of the fraction provided in subparagraph (1) of this paragraph (e),

shall be the number of days the individual was domiciled in the State during the taxable year.

(3) *Example.* The application of this paragraph may be illustrated by the following example:

Example. A, a calendar-year taxpayer, is a resident of State X continuously for many years prior to March 15, 1977. On such date, A retires and establishes a new principal place of residence in State Y. A earns \$6,000 in 1977 prior to March 15, but receives no taxable income for the remainder of such year. If A had been a resident of State X for the entire taxable year 1977, his liability with respect to the qualified tax of such State (computed after allowing the nonrefundable credits available against the tax) would be \$600. If he had been a resident of State Y for the entire taxable year 1977, his liability with respect to the qualified tax on that State (computed similarly) would be \$400. Pursuant to the provisions in paragraph (e) of this section, A's liabilities for State qualified taxes for 1977 are as follows:

Liability for State X tax = $\$600 \times 73/365 = \120

Liability for State Y Tax = $\$400 \times 292/365 = \320 .

(f) *Current collection of tax.* The State tax laws shall contain provisions for methods of current collection with respect to individuals which correspond to the provisions of the Internal Revenue Code of 1954 with respect to such current collection, including chapter 24 (relating to the collection of income tax at source on wages) and sections 6015, 6073, 6153, and other provisions of the Code relating to declarations (and amendments thereto) and payments of estimated income tax. Except as otherwise provided by Federal statute (see paragraphs (h), (i), and (j) of § 301.6362-7), in applying such provisions of the State tax laws:

(1) In the case of a resident tax, an individual shall be subject to the current collection provisions if either—

(i) He is a resident of the State within the meaning of paragraph (b) of this section, or

(ii) He has his principal place of residence (as defined in paragraph (b)(2) of this section) within the State,

And it is reasonable to expect him to have it within the State for 30 days or more during the taxable year.

(2) In the case of a nonresident tax, an individual shall be subject to the current collection provisions if he does not meet either description relating to

an individual in subparagraph (1) of this paragraph (f), if he is not exempt from liability for the tax by reason for a reciprocal agreement between the State of which he is a resident and the State imposing the tax, and if it is reasonable to expect him to receive wage or other business income derived from sources within the State imposing the tax (as defined in paragraph (d) of § 301.6362-5) for services performed on 30 days or more of the taxable year.

For additional rules relating to withholding see paragraph (d) of § 301.6361-1.

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§ 301.6362-7 Additional requirements.

A State tax meets the additional requirements of section 6362(f) and this section only if:

(a) *State agreement must be in effect for period concerned.* A State agreement, as defined in paragraph (a) of § 301.6361-4, is in effect with respect to such tax for the taxable period in question.

(b) *State laws must contain certain provisions.* Under the laws of such State, the provisions of subchapter E and the regulations thereunder, as in effect from time to time, are applicable for the entire period for which the State agreement is in effect. Any change made by the State in such tax (other than an adjustment in the State law which is made solely in order to comply with a change in the Federal Law or regulations) shall not apply to taxable years beginning in any calendar year for which the State agreement is in effect unless the change is enacted before November 1 of such year.

(c) *State individual income tax laws can be only of certain kinds.* Such State does not impose any tax on the income of individuals other than (1) a qualified resident tax, and (2) either or both a qualified nonresident tax and a separate tax on income which is not wage and other business income as defined in paragraph (c) of § 301.6362-5 and which is received or accrued by individuals who are domiciled in the State, but who are not residents of the State (as defined in paragraph (b) of § 301.6362-6). For purposes of this paragraph, a tax imposed on the amount taxed under section 56 (as permitted under § 301.6362-2(b)(2)) shall be treated as an